REMARKS

This amendment is filed in response to the Office Action mailed on July 16, 2003.

Claims 353-373 and 422-439 are pending in the application. Claims 353-373 and 422-439 have been examined and stand rejected. Claims 440-483 have been added. Consideration of Claims 353-373 and 422-483 is respectfully requested.

New Claims 440-483

Claims 440-483 have been added. Each one of Claims 440-483 is dependent directly or indirectly from an independent claim.

Objection to the Specification

The priority claim has been amended to include a PCT application filed on October 19, 2000. The abandoned applications have been identified, and minor typographical errors corrected.

The Abstract has been replaced with a new paragraph containing less than 150 words.

The Rejection of Claims 354, 361, 369-373, 428, and 429
Under 35 U.S.C. § 112, Second Paragraph

Claims 354, 361, 369-373, 428, and 429 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention. As to Claims 354, 361, 369, and 428, the Examiner states "it is not clear what types of information would qualify as being 'legally required,' or by whose authority it would be legally required." As to Claims 369 and 428, the Examiner states "it is not clear whether 'composed' is being used as an open term, such as 'comprising,' or whether it is being used as a closed term, such as 'consisting.'"

Applicant respectfully traverses the rejection. The claims as presented are clear to a person of ordinary skill in the art. Nevertheless, Claims 354, 361, 369, and 428 have been

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amended to remove the objectionable phrases so as to expedite the issuance of a patent, and not for any reason related to patentability.

Accordingly, applicant respectfully requests the withdrawal of the rejection of Claims 354, 361, 369-373, 428, and 429.

The Rejection of Claims 422, 423, 425, and 426 Under 35 U.S.C. § 102(a)

Claims 422, 423, 425, and 426 are rejected under 35 U.S.C. § 102(a) as being anticipated by THE WILEY ENCYCLOPEDIA OF PACKAGING TECHNOLOGY, Second Edition. Applicant respectfully traverses the rejection. Claim 422 has been amended to recite a broader scope.

As now amended, Claim 422 recites:

> obtaining meat;
>
> thereafter, transferring the meat to packaging;
>
> thereafter, transferring the packaging to barrier containers;
>
> thereafter, introducing a blend of gases to the barrier containers, wherein said gases include carbon monoxide; and
>
> thereafter, sealing the barrier containers.

In order for a reference to be anticipatory, the reference must exactly describe a claimed invention. "Every element and limitation of the claimed invention must be found in a single prior art reference, *arranged as in the claim.*" *Brown v. 3M*, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001). "One seeking to invalidate a patent may not demonstrate invalidity of a claim simply by citing isolated steps in prior art that are not combined in the same fashion as the patent." *Chemical Separation Technology Inc. v. United States*, 63 USPQ2d 1114, 1153 (Fed. Cl. 2002); *see also, Crowell v. Baker Oil Tools, Inc.*, 68 USPQ 385 (9th Cir. 1946) ("It is not enough that one finds in prior art similar steps here and there, since inventive genius consists in picking out and combining old steps or inventing new ones in a new combination.").

The Examiner states that "Wiley teaches a method of packaging meat by obtaining meat primals, transferring them to trays, transferring to barrier containers, introducing gases including

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carbon monoxide, sealing the containers, reducing bacteria, removing oxygen, and storing the containers." Applicant disagrees. The exact steps are not present in the WILEY ENCYCLOPEDIA, and whatever steps *are* present, are not arranged as in the claimed invention.

For example, while a section is devoted to carbon monoxide (page 651), that section refers to the prevention of oxidative browning of fruits and vegetables, it is silent with respect to its use regarding meat as recited in the claim. A section is devoted to plastic barrier films (page 652). However, that section does not describe transferring packaged meat into barrier containers as recited in the claim. A section is devoted to vacuum packaging of meat (pages 653-654). However, that section describes vacuum packaging primal portions. According to WILEY, after vacuum-packaged meats reach the store, they are unpacked, cut into appropriate consumer units, and placed in polystyrene foam trays or PVC trays and overwrapped with O_2 *permeable* films. In direct contrast to the claimed invention, that section does not describe taking the packaged meat and putting the *packaged meat into barrier* containers. Gas-permeable films and barrier containers are quite different from one another. Gas-permeable films are intended to allow the passage of gas therethrough, while barriers are intended to minimize the passage of gas. A clearer teaching away from the claimed invention cannot be more apparent. Furthermore, there is nothing to suggest the placing of packaged meat into barrier containers.

Because the WILEY ENCYCLOPEDIA does not describe the steps as arranged in the claimed invention, the WILEY ENCYCLOPEDIA is not anticipatory.

While there may be other reasons why the WILEY ENCYCLOPEDIA is not anticipatory, for at least the reasons discussed above, the WILEY ENCYCLOPEDIA is not anticipatory. Applicant further submits that the WILEY ENCYCLOPEDIA does not remotely suggest or motivate one to make the claimed invention. Accordingly, applicant requests withdrawal of the rejection of Claims 422, 423, 425, and 426.

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The Rejection of Claims 430-432, 438, and 439 Under 35 U.S.C. § 103(a)

Claims 430-432, 438, and 439 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Groves et al. (U.S. Patent No. 4,171,164), in view of Inglis et al. (U.S. Patent No. 6,224,930). Applicant respectfully traverses the rejection.

Independent Claim 430 recites in relevant part:

> combining a first quantity of meat with a second quantity of meat, wherein at least one of said quantities of meat has been treated with a bacteria-reducing agent and an amount of water to provide a controlled amount of added water in the combined meat.

Independent Claim 438 recites in relevant part:

> transferring a first stream of meat having at least one variable to a device capable of measuring at least one variable;
>
> transferring a second stream of meat having at least one variable to a device capable of measuring at least one variable; and
>
> combining the first and second streams of meat, wherein the first and second streams of meat have been in contact with a gas that has an oxygen content different from the oxygen content of air.

Independent Claim 439 recites in relevant part:

> transferring a first stream of meat having at least one variable to a device capable of measuring at least one variable;
>
> transferring a second stream of meat having at least one variable to a device capable of measuring at least one variable; and
>
> combining the first and second streams of meat, wherein combining takes place in the presence of a gas that has an oxygen content different from the oxygen content of air.

The Examiner states that:

> it would have been obvious to one of ordinary skill in the art to incorporate the carbonic acid and packaging techniques of Inglis et al. into the invention of Groves et al. since both are directed to methods of processing meat, since Groves et al. used raw meat which often included bacteria, since Groves et al. would have required some means to package

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> the blended raw meat, since the carbonic acid of Inglis et al. would have reduced the amount of bacteria without negatively impacting the taste of the meat, and since the packaging of Inglis et al. would have effectively preserved the meat of Groves et al.

The comments made by the Examiner are vague and confusing. What "carbonic acid and packaging techniques" does the Examiner mean can be incorporated into Groves et al., how can they be incorporated, and where is the motivation or suggestion to incorporate them in the manner to produce what is claimed? It is the Examiner who bears the burden of conclusively showing the obviousness of the claimed invention by more than mere subjectiveness. "It is fundamental that rejections under 35 U.S.C. § 103 must be based on evidence comprehended by the language of that section." *In re Grasselli*, 713 F.2d 731, 739, 218 USPQ 769, 775 (Fed. Cir. 1983). When patentability turns on the question of obviousness, the search for and analysis of the prior art include evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. *See*, for example, *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001). "The factual inquiry whether to combine references must be thorough and searching." *Id.* It must be based on objective evidence of record.

For any claim to be obvious, there must first be a teaching or suggestion in the prior art or in the knowledge that is generally available, to combine or modify references and thus produce the claimed invention. There must be a reasonable expectation of success, and all of the elements in the claimed invention must be described in the prior art references. As to the first requirement, the Examiner is merely speculating. How does the Examiner know what Groves used, and what he would have required? As to the last requirement, the Examiner ignores, or at best misunderstands, the elements of the claimed embodiment of the invention.

For example, as to Claim 430, the Examiner points to a passage from Inglis et al. supposedly describing determining the water content and adding the proper amount (Col. 4,

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line 10). However, upon closer examination, the passage relates to compensating for the low water activity (A_w) in a foodstuff that has an impervious coating, such as peppercorns. Inglis et al. describes that:

> lower A_w foodstuffs may require longer exposure times without the addition of a small quantity of water, generally 1 to 2% by weight, based on the weight of the material to be treated, onto the surface. This additional water can be applied as a fine mist in the case of relatively impervious products, such as peppercorns or by steaming in more difficult applications.

(Col. 3, line 63 to Col. 4, line 12.) This passage has nothing to do with treating meat with a bacteria-reducing agent and an amount of water that results in a controlled amount of added water in the combined meat, as in the claimed embodiment of the invention. What Inglis et al. is saying is that the transference rate of a volatile substance can be increased by applying water to foodstuffs that do not have a high water activity. In cases where the foodstuff has a water activity of 0.95, the transference rate is near optimum, and consequently no water needs to be added. (Col. 3, line 67 to Col. 4, line 2.) In Table 3, Inglis et al. describes that the water activity of ham is 0.95. Therefore, what Inglis et al. teaches is that meats should not be treated with water. Furthermore, even if water were added to meat, the object of Inglis et al. is not to produce a combined meat product that has a controlled amount of added water. Inglis et al. describes drying the product treated with water. "If surface wetting is a technical requirement, then mild *surface drying* post-treatment will promote the volatilization of surface acids thereby reducing acidulation." (Col. 4, lines 13-15.)

Accordingly, there is no suggestion or motivation to combine Inglis et al. with Groves et al. and, even if they are combined, the combination does not result in the claimed embodiment of the invention. As explained above, Inglis et al. dealt with the addition of water to relatively impervious products so as to increase the transference rate of a volatile substance from a gas to

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the product. Because Groves et al., which deals in meat, and Inglis et al. do not see a reason to add water to meat, the teachings of the references are directly contrary to Claim 430.

Accordingly, applicant respectfully requests withdrawal of the rejection of Claim 430. Because Claims 431 and 432 are dependent from Claim 430, these claims are allowable as well.

As to Claim 438, this claim recites "combining the first and second streams of meat, wherein the first and second streams of meat have been in contact with a gas that has an oxygen content different from the oxygen content of air." Groves et al. describe a fat analysis and meat-blending system open to ambient air. The Examiner admits that Groves et al. do not teach treating the meat with a bacteria-reducing agent, transferring to barrier packages that are case-ready modified-atmosphere packages, removing oxygen from the packages, and sealing the packages. As claimed in Claim 438, the claimed method combines first and second streams of meat, wherein the first and second streams of meat have been in contact with a gas that has an oxygen content different from the oxygen content of air. The Examiner states that Inglis et al. describe a method that may be readily incorporated into the method of Groves et al. to thus arrive at the claimed embodiment of the invention. However, on closer examination of the references, it is apparent that there is no suggestion or motivation to combine or modify references that result in the claimed invention, and, in the event the references are combined, the references do not result in the method of Claim 438.

The Inglis et al. patent is describing a method that treats a perishable product with a volatile substance. Preferably, the method should be performed immediately before packaging and after all processing. Please see Column 4, lines 25-31. Accordingly, Inglis et al. are strongly motivated to package any treated materials according to their method in such a manner as to minimize any further microbial contamination. This means that further processing of the product is discouraged and that the product should go immediately to packaging after treatment. Therefore, applicant submits that, if any suggestion or motivation exists for combining Inglis

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et al. with Groves et al., such hypothetical combination method would place the Inglis et al. method at the end of the Groves et al. process so as to minimize the amount of time the product is in contact with air. The hypothetical process would result in decontaminating only the ground meat patties made by Groves et al. in the manner described by Inglis et al. Such hypothetical combination is not the claimed embodiment of the invention, that exposes the meat to gas wherein the majority of said gas comprises gas other than air, prior to combining meat streams. Whereas the claimed embodiment of the invention recites contact with a gas that has an oxygen content different from the oxygen content of air prior to combining the meat, the hypothetical combination of Groves et al. with Inglis et al. would inevitably result in combining meat first, followed by treatment with carbon dioxide, which is not what is recited in Claim 438.

Accordingly, the only inference that can be drawn is that the Examiner has impermissibly used hindsight based on the applicant's disclosure to improperly find Claim 438 obvious. "The mere fact that references can be combined or modified does not render the resulting combination obvious unless the prior art also suggests the desirability of the combination." *In re Mills*, 16 USPQ2d 1430 (Fed. Cir. 1990). Furthermore, the Examiner is not allowed to take and choose isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988). When prior art references require a selective combination to render obvious an invention, there must be some suggestion for the combination other than the hindsight gleaned from the invention itself. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 221 USPQ 929 (Fed. Cir. 1984). The claims cannot be used as a frame, so that individual naked parts of separate prior art references are employed as a mosaic to recreate a facsimile of the claimed invention. *W.L. Gore and Assocs., Inc. v. Garlock, Inc.*, 220 USPQ 303 (Fed. Cir. 1983).

Accordingly, for all the reasons discussed above, applicant respectfully requests the withdrawal of the rejection of Claim 438.

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As to Claim 439, this claim recites "combining the first and second streams of meat, wherein combining takes place in the presence of a gas that has an oxygen content different from the oxygen content of air."

As distinguished from Claim 438, Claim 439 combines meat in the presence of a gas that has an oxygen content different from that of air. For the same reasons that Claim 438 is not obvious, Claim 439 is not obvious, either. As discussed above, Inglis et al. preferably treat products after any processing and immediately before packaging so as to minimize the exposure of the treated product to further microbial contamination. Accordingly, the process of Inglis et al. would be placed after the patty-forming machines of Groves et al., so as to avoid microbial contamination, long after any combining of meat has taken place. Therefore, the resultant hypothetical combination process of Groves et al. with Inglis et al. is not the process of Claim 439.

Accordingly, applicant respectfully requests the withdrawal of the rejection of Claim 439. While there may be other reasons why Claims 430 - 432, 438, and 439 are not obvious, for at least the reasons discussed above, Claims 430-432, 438, and 439 are not obvious.

The Rejection of Claims 353-356, 358, 359, 366-373, 427, 428, 433-435, and 437 Under 35 U.S.C. § 103(a)

Claims 353-356, 358, 359, 366-373, 427, 428, 433-435, and 437, are rejected under 35 U.S.C. § 103(a) as being unpatentable over Groves et al., in view of Inglis et al., and further in view of Goldsmith (U.S. Patent No. 5,306,466). Applicant respectfully traverses the rejection.

Claim 353 in relevant part recites:

> transferring a controlled amount of the first and second streams to a vessel having a gas, wherein the majority of said gas comprises gas other than air; [and] blending the first and second streams in the vessel to provide a blended stream of proportional fat content.

There is no suggestion or motivation to combine Groves et al. with Inglis et al. First of all, Groves et al. describe a method for blending, where the blending is taking place in the

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presence of air. After the blender, the meat is conveyed, sent into a hopper, further conveyed to a grinder, and finally sent to patty-forming machines. The process proceeds in air throughout. Inglis et al. describe that their method is preferably practiced in such a manner so as to minimize any further microbial contamination, especially if a favorable environment exists to initiate and support further microbial growth. Applicant submits that because of taking place in air, the method of Groves et al. is one such method favorable to support further microbial growth. Accordingly, if the method of Inglis et al. were at all to be combined with the method of Groves et al., the exposure to the carrier gas and volatile substance as taught by Inglis et al. would take place after the patty-forming machines, because of the presence of air throughout the process of Groves et al. However, the claimed embodiment of the invention is describing the blending of first and second streams of meat in a vessel that is filled with a gas wherein the majority of said gas comprises gas other than air. There is no suggestion or motivation to modify Groves et al., based on Inglis et al., so that the Groves et al. blender would contain a gas other than air. In fact, if one were to look at the preferred system to process meat according to Groves et al., from Figure 2, the blender 15 appears to be an open-ended vessel into which meat is deposited from above. Such vessel would be neither efficient nor practicable to serve as a blender wherein blending can take place with a gas wherein the majority of said gas comprises gas other than air. Without a motivation or suggestion to combine or modify references and a reasonable expectation of success, the claimed invention cannot be considered obvious.

Furthermore, there is no suggestion or motivation to combine Goldsmith with either Inglis et al. or Groves et al. Goldsmith describes a tray for holding a food product. The tray has a hole in the bottom, over which a bar code can be applied to seal the hole and also to provide an indication of whether toxins are present in the liquids. Applicant submits that such a tray would never be used in any method calling for barrier containers, due to the poor barrier properties of trays with holes.

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For all the reasons described above, Claim 353 is not obvious. Claims 354-356, 358, and 359 are dependent upon Claim 353, therefore these claims are not obvious, either. The lack of any suggestion or motivation to combine references, the likelihood that the combination, if attempted, would fail, and the absence of claim limitations in the references, can only mean that the Examiner has impermissibly used hindsight gained from the applicant's disclosure. Accordingly, applicant requests the withdrawal of the rejection of Claims 353-356, 358, and 359.

As now amended, Claim 366 recites:

> grinding meat to provide ground meat;
>
> exposing the meat to a gas before or during grinding, wherein said gas inhibits bacterial growth before or during grinding, and wherein the majority of said gas comprises gas other than air;
>
> transferring the ground meat to a web of barrier material;
>
> sealing the web to enclose the ground meat in an atmosphere having an oxygen level lower than the oxygen level of air;
>
> testing the ground meat for the presence of bacteria; and
>
> applying indicia to the web, wherein the indicia include information related to the ground meat.

The Examiner is asked to note the recitation of exposing the meat to a gas before or during grinding, wherein said gas inhibits bacterial growth, and wherein the majority of said gas comprises gas other than air. The discussion above is pertinent here also. If there is nothing in the references to suggest or motivate one to blend meat in a gas wherein the majority of said gas comprises gas other than air, there is certainly nothing to suggest or motivate one to grind meat in a gas wherein the majority of said gas comprises gas other than air, because grinding is taking place prior to blending. Accordingly, Claim 366 is not obvious; therefore, applicant respectfully requests withdrawal of the rejection of Claim 366.

Claims 367, 368, and 427 are dependent directly or indirectly from Claim 366, therefore, these claims are not obvious.

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As to Claim 369, this claim recites in part:

> harvesting meat portions from an animal, . . . treating the meat with an agent including water that inhibits the growth of bacteria; grouping the meat into classifications according to at least one variable . . . ; [and] combining quantities of meat according to at least one of the variable components . . . .

The Examiner will note that there is a step, in Claim 369, reciting treating meat with an agent including water that inhibits the growth of bacteria. The treatment of meat with an agent and water has been discussed above in association with Claim 430, and neither Groves et al., alone, nor in combination with Inglis et al. and Goldsmith, describe this step. The Examiner will further notice that there is a step reciting grouping the meat into classifications according to at least one variable, thereafter followed by combining quantities of meat according to at least one variable. For example, one embodiment of the invention may be to harvest chicken parts and group them into classifications according to fat level. Thereafter, a portion from one classification may be combined with a portion from another classification to provide a meat product with a combined quantity of at least one variable. In direct contrast to Claim 369, Groves et al. do not remotely teach or suggest grouping into classifications according to at least one variable, and thereafter combining quantities according to at least one variable. Neither Inglis et al. nor Goldsmith provides the requisite motivation or suggestion to produce the embodiment of Claim 369.

Therefore, for at least the reasons discussed above, Claim 369 is not obvious. Claims 370-373, which depend from Claim 369, are also not obvious.

As to Claim 428, this claim recites in part:

> harvesting meat comprised of several components having a variable relative ratio, including at least fat, muscle, and water, wherein the ratio of at least one component is determined; [and] grouping the meat into classifications according to at least one variable component; . . . .

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Thereafter, the claim recites combining quantities of meat according to at least one of the variable components. As discussed above, Groves et al., Inglis et al., and Goldsmith do not provide any suggestion or motivation for grouping into classifications, and thereafter combining the meat. Therefore, Claim 428 is not obvious.

As to Claims 433-435 and 437, these claims are indirectly dependent from Claim 430. Claim 430 recites in part:

> combining a first quantity of meat with a second quantity of meat, wherein at least one of said quantities of meat has been treated with a bacteria-reducing agent and an amount of water to provide a controlled amount of added water in the combined meat.

The rejection of Claim 430 has been discussed in a previous section, and Claim 430 is believed to be allowable. Therefore, Claims 433-435 and 437 are also allowable.

While there may be other reasons why Claims 353-356, 358, 359, 366-373, 427, 428, 433-435, and 437 are not obvious, for at least the reasons discussed above, these claims are not obvious over Groves et al., either alone or in view of Inglis et al., and further in view of Goldsmith. Accordingly, applicant requests the withdrawal of the rejection of Claims 353-356, 358, 359, 366-373, 427, 428, 433-435, and 437.

The Rejection of Claim 357 Under 35 U.S.C. § 103(a)

Claim 357 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Groves et al. in view of Inglis et al. and Goldsmith, and further in view of THE WILEY ENCYCLOPEDIA OF PACKAGING TECHNOLOGY. Applicant respectfully traverses the rejection.

Claim 357 is dependent from Claim 353, which is allowable. The reasons why there is no suggestion or motivation to combine or modify the cited and applied references is extensively discussed above. The WILEY ENCYCLOPEDIA does not supply the missing motivation or suggestion or the elements that are lacking in Groves et al., Inglis et al., and Goldsmith. Accordingly, applicant respectfully requests the withdrawal of the rejection of Claim 357.

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The Rejection of Claims 360-365, and 424 Under 35 U.S.C. § 103(a)

Claims 360-365 and 424 are rejected under 35 U.S.C. § 103(a) as being unpatentable over THE WILEY ENCYCLOPEDIA OF PACKAGING TECHNOLOGY, Second Edition, in view of Goldsmith. Applicant respectfully traverses the rejection.

Claim 360 recites in relevant part:

> . . . removing the primals from the containers and cutting the primals to provide primal portions;
>
> placing the primal portions into barrier packages;
>
> introducing a gas into the packages, wherein the majority of said gas comprises gas other than air;
>
> sealing the packages; and
>
> testing the meat for the presence of bacteria.

In direct contrast to Claim 360, THE WILEY ENCYCLOPEDIA describes "when vacuum packaged meats reach the store they are unpacked, cut into appropriate consumer units and placed in polystyrene foam trays or PVC trays and overwrapped with oxygen *permeable* films." The WILEY reference describes using oxygen-*permeable* films as contrasted with the *barrier* packages of the claimed embodiment of the invention.

For at least this reason, Claim 360 is not obvious. Claims 361-365 are dependent from Claim 360, therefore, these claims are also allowable. Claim 424 is dependent from Claim 422, that recites placing packaging into *barrier* containers also.

Accordingly, applicant respectfully requests the withdrawal of the rejection of Claims 360-365 and 424.

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The Rejection of Claims 429 and 436 Under 35 U.S.C. § 103(a) Over Groves et al.

Claims 429 and 436 are rejected under 35 U.S.C. § 103 as being unpatentable in view of Inglis et al., and Goldsmith, and further in view of Shaklai (U.S. Patent No. 6,270,829). Applicant respectfully traverses the rejection.

Claims 429 and 436 are dependent from Claims 428 and 430, respectively. Both Claims 428 and 430 have been discussed above, and are allowable. Therefore, Claims 429 and 436 are allowable. Shaklai does not cure the deficiencies noted with Inglis et al. and Goldsmith. Accordingly, applicant respectfully requests the withdrawal of Claims 429 and 436.

CONCLUSION

In view of the foregoing amendments and remarks, applicant respectfully submits that Claims 353-373 and 422-483 are allowable. If there are any questions that may be expeditiously resolved with a telephone call, the Examiner is invited to contact the applicant's attorney at the number provided below.

Respectfully submitted,

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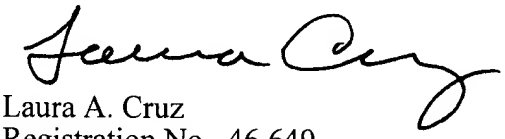

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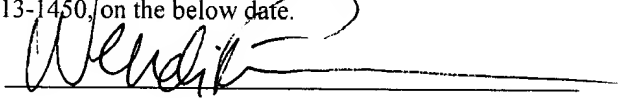

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